

**Amendments to the Drawings**

The attached sheet of drawings includes changes to Figs. 3A and 3B. This sheet replaces the original sheet including Figs. 3A and 3B. In Figs. 3A and 3B, references 114-117 have been deleted.

Attachment: Replacement Sheet

Annotated Sheet Showing Changes

**REMARKS**

At the time of the Office Action dated November 28, 2005, claims 1-11 were pending in this application. Applicant acknowledges, with appreciation, the Examiner's allowance of claims 5-11. Applicant also acknowledges, with appreciation, the Examiner's indication that claims 3 and 4 would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

In this Amendment, claims 1 and 6-11 have been amended, claims 3 and 4 canceled, and new claims 12 and 13 added. Care has been exercised to avoid the introduction of new matter. Specifically, claims 1 and 6-11 have been amended to improve wording but the scope of the claims has not been narrowed for any reason relating to patentability. New claims 12 and 13 are independent forms of allowable claims 3 and 4, respectively.

**Drawings**

The drawings have been objected to because reference 221 in Fig. 1 and references 114-117 in Figs. 3A and 3B are not mentioned in the description. In response, Applicant has amended paragraph [0027] of the specification to mention reference 221 of Fig. 1, and deleted references 114-117 from Figs. 3A and 3B. Accordingly, withdrawal of the objection to the drawings is respectfully solicited.

**Claims 1 and 2 have been rejected under 35 U.S.C. §102(b) as being anticipated by Wong.**

In the statement of the rejection, the Examiner asserted that Wong discloses oxygen measurement using visible radiation identically corresponding to what is claimed. This rejection is respectfully traversed.

It is well established precedent that the factual determination of lack of novelty under 35 U.S.C. §102 requires the identical disclosure in a single reference of each element of the claimed invention, such that the identically claimed invention is placed into the possession of one having ordinary skill in the art. *See EMI Group N. Am., Inc. v. Cypress Semiconductor Corp.*, 268 F.3d 1342, 60 USPQ2d 1423 (Fed. Cir. 2001); *Helifix Ltd. v. Blok-Lok, Ltd.*, 208 F. 3d 1339, 54 USPQ2d 1299 (Fed. Cir. 2000); *Electro Medical Systems S.A. v. Cooper Life Sciences, Inc.*, 34 F.3d 1048, 32 USPQ2d 1017 (Fed. Cir. 1994).

In response, Applicant submits that Wong does not teach an optical assembly including all the limitations recited in independent claim 1. Specifically, the reference does not disclose, among other things, “a heater for simulating a self-heating of said laser diode by providing a supply current before said driving signal is provided to said laser diode,” recited in claim 1.

Wong discloses a method for driving a laser diode (LD), and in particular, discloses controlling an emission wavelength of the LD. To maintain the emission wavelength of the LD, a heater and a cooler are required to control an operating temperature of the LD to be constant. The operating temperature is first coarsely controlled by a combination of a thermistor and the heater/cooler, and then finely controlled by using the optical output waveform from the LD. Accordingly, the cooler, the heat sink mounted on the cooler, and the heater on the heat sink are required in Wong, in which the heater provides heat to the heat sink (see column 9, lines 7-9).

In contrast, the claimed heater is configured for simulating a self-heating of the laser diode by providing a supply current before the driving signal is provided to the laser diode. The claimed heater is provided to simulate operation of the laser diode, i.e., the heater is configured for providing a supply current to the laser diode for simulating a self-heating of the laser diode. The claimed heater is not configured for providing heat to the laser diode. It is apparent that Wong is silent with respect to the claimed heater.

The above-described fundamental difference between the claimed invention and Wong undermines the factual determination that Wong identically describes the claimed invention within the meaning of 35 U.S.C. §102. Dependent claim 2 is also patentably distinguishable over Wong at least because it includes all the limitations recited in independent claim 1. Applicant, therefore, submits that the imposed rejection of claims 1 and 2 under 35 U.S.C. §102(b) for lack of novelty as evidenced by Wong is not factually viable and, hence, respectfully solicits withdrawal thereof.

### **Conclusion**

It should, therefore, be apparent that the imposed rejections have been overcome and that all pending claims are in condition for immediate allowance. Favorable consideration is, therefore, respectfully solicited.

To the extent necessary, a petition for an extension of time under 37 C.F.R. 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper,

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including extension of time fees, to Deposit Account 500417 and please credit any excess fees to such deposit account.

Respectfully submitted,

McDERMOTT WILL & EMERY LLP

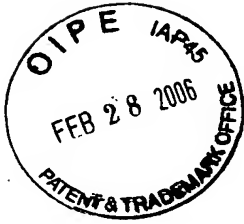
A handwritten signature in black ink, appearing to read "Tomoki Tanida", written over the printed name.

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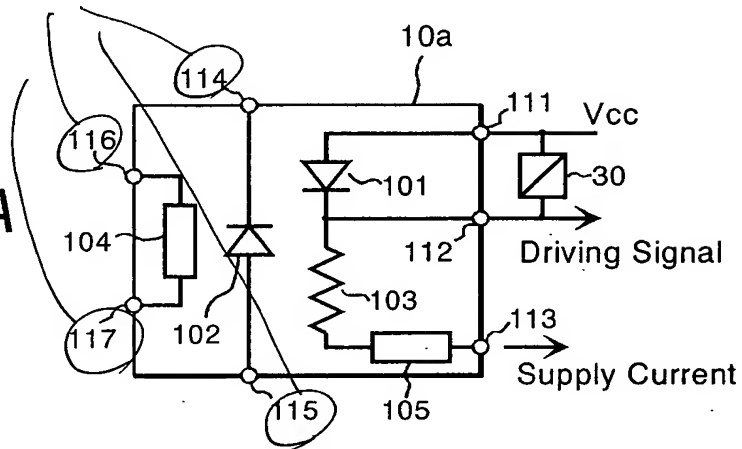
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References 114-117 deleted

FIG. 3A



References 114-117 deleted

FIG. 3B

